AN

APPEAL

TO THE

CONSCIENCE

OF A

FANATICK:

SHEWING,

That the KING of *ENGLAND*, by the Fundamental Laws of it, is as absolute and Independent a Monarch, as any of the Kings mentioned in Scripture; and consequently as free as any of them, from any Humane, Coactive Power, to Punish, Censure, or Dethrone him.

Whereunto is added,

A Short view of the Laws both Foreign and Domestick, against Seditious Conventicles.

By a Barrister at Law.

LONDON:

Printed by *J. G.* for *John Walthoe*, at the *Black-Lyon* in *Chancery-Lane*, overagainst *Lincolns-Inn*, 1684.

XUM

AN APPEAL TO THE CONSCIENCE OF A Fanatick, &c.

SIR,

YOurs I have received, wherein you are pleaſed to ſignify, that you have ſhewn the ſeveral Tracts which have been lately written, and expoſed to publick View, in defence of the Doctrine of Non-reſiſtance, to ſome of your Neighbors, who are much inclined to Fanaticiſm, and they ſay, upon peruſal of them, that though they ſhould grant to our Church-men what they have endeavoured to prove out of Scripture, *Viz. The unlawfullneſs of Subjects taking up Arms againſt their Sovereign in what Caſe ſoever,* yet they

P.B. 51

P.

7/6

they fancy, that the King of *England* is not such a King as the Scriptures mention. It is (say you) an Evasion they much boast of, whensoever they read any pieces of this nature: *What is all this to us, who Live not under such a King as the Holy Scriptures makes mention of.* Well, seeing that this Evasion is the *Diana* they so much vaunt of, I am resolved, out of the Zeal and Love I bear my King and Country, and for the prevention of another Rebellion, (having been sufficiently sensible of the dire and calamitous Effects of the former) to set forth the excellent and sweet agreement, which the Municipal Laws of this Realm have with the Laws of God in this particular, affirming, *That the King of* England *is such a King as the Scriptures mention*, and that in a fourfold Respect.

In Respect
1. *Of his Right to the Crown.*
2. *Of his Authority and Power.*
3. *Of his Charge, and Duty.*
4. *Of the Rendring of his Account.*

1*st*. *The King of* England's *Right to the Crown is by Birth, Descent, or Hereditary Succession.* And this shall be apparanted in these four particularities.

First, By that part of the Oath of Allegiance which is used in every Leet, *You shall swear, that from this day forward, you shall be true and faithful to our Sovereign Lord King* Charles *and his Heirs*, which demonstrates the Descent. And by the by, I presume it will not be amiss to present to our *Fanaticks* the whole scope and aim of this *Oath* of *Allegiance*, as it is expressed in the Laws and Constitutions of our King *William* the First.

Co. Lib. 7. Calvin's Case.

Statuimus ut omnes Liberi Homines fædere & Sacramento

mento affirment, quod intra, & extra universum Regnum Angliæ (quod olim vocabatur Regnum Britanniæ) *Willielmo Regi Domino suo fideles esse volunt Terras & Honores illius omni fidelitate ubique servare cum eo, & contra inimicos & alienigenas defendere.* Lex 52. *De fide & obsequio erga Regem.* Add hereto another Constitution of the Conqueror, whereby all subjects are commanded, *ut Jura Regia illæsa servare pro viribus Conentur.*

Statuimus etiam, & firmiter præcipimus, ut omnes Liberi homines totius Regni nostri prædicti, sint fratres Conjurati ad Monarchiam nostram & ad Regnum Nostrum pro viribus suis, & facultatibus contra inimicos pro posse suo defendendum, & viriliter servandum, & Pacem & dignitatem Coronæ nostræ integram observandam. Lex 59. Both which Laws, and many others enacted and granted by the Conqueror, were observed and kept in the Reign of King *Edward* the Confessor.

Secondly, For that we do our Ligeance to the King in his natural Capacity, that is, as he is *Charles,* the Son and Heir apparent of King *Charles* the *Glorious and Royal Martyr.* For Ligeance, or Homage cannot be done to the King in his Politick capacity, for so the Body of the King is invisible. If this be true Law, as it is, what shall we judge then of the new Coined distinction, to make a difference betwixt the King and his Authority? betwixt his Personal Will, and his Royal and Authoritative Will? to pursue the late Kings Person with a Cannon-Bullet at *Edge-hill,* and to preserve his Authority at *London* or elsewhere? I am sure 'tis Evident by the 25. *E.* 3. *C.* 2. *De proditionibus,* that it is High-Treason to compasse the Kings Death, by which must be meant to endeavour his Personal ruine; be-

Coke Lib. 7. *Calvin's Case.*

cause the Regal Authority never dies in *England*. Oh *Fanaticks*! take heed then for the future of New-coined distinctions; take heed of the cunning Wiles and Sleights of the *Jesuits*: There is no Wickedness but hath some excuse.

In that great Insurrection, in *Richard* the Seconds time, the Commons had a fair pretence. *Their Intent was* (as they said) *to abolish the Law of Velleinage and Servitude, and to slay the Corrupt Judges.* And they took an Oath, forsooth, to be true to the King and Commons, and that they would take nothing but what they paid for; and they punished all Theft with death: yet in the Parliament of 5. *R.* 2. *N.* 3, and 32. They were adjudged Traytors.

The Earls of *Northumberland* and *Westmerland*, in the Reign of Queen *Elizabeth*; could *in the Queens Name command the Country to follow them in Arms: sometimes pretending the safety of Her Majesties Person, in danger* (they said) *by Treasons in working; And sometimes in case of Conscience, for restoring their former Religion. And in this Zeal they hasted to* Durrham Minster, *where they tare the Bible (and Communion Book; and such other things as there were,* saith Stow) *in great Contempt.* Yet these were mere Rebels and Traytors. Speed *Lib.* 9. *Cap.* 24.

Wherefore examine, search diligently into the Cause, every thing is not as it seems: *All is not Gold that Glisters*: I beseech you to look before you leap into Rebellion, that Sin of *Witch-craft*.

Thirdly, It is expresly affirm'd in the Case of *Calvin*, *That the King holds the Kingdom of* England *by Birth-Right Inherent by Descent from the Blood-Royal*; whereupon Succession doth attend, and therefore it is usually said,

Co. Lib. 7. Calvin's Case.

ſaid, *To the King, his Heirs and Succeſſors*; wherein Heirs is firſt named, and Succeſſors attendant upon Heirs; but the Title is by Deſcent. By Queen *Elizabeth's* Death the Crown and Kingdom of *England* deſcended to King *James*, and from him to King *Charles* the Firſt, and from him to the King that now is, and they were fully and abſolutely thereby Kings, without any eſſential Ceremony or Act to be done, *Ex poſt facto*.

And by the way, how inſeparable this Right of deſcent is from the next in Blood, you may ſee in *H.* 4. who though he was alſo of the Blood-Royal, and had the Crown reſigned unto him from *R.* 2. and confirmed by Act of Parliament; yet upon his Death-Bed he acknowledged he had no right thereunto, as *Speed* tells us, *Lib.* 9 *C.* 14. Add to this acknowledgment the words of Sir *Edward Coke*; *The Dignity Royal* (ſaies he,) *is an Inherent inſeparable to the Royal Blood of the King, and deſcendable to the next of Blood of the King, and cannot be transferred to another.* *Co.* Lib. 12. F. 28.

Laſtly, By all the Judges 1. *Jacobi*, at the Arraignment of *Warſon* and *Clerk*, Two *Seminary* Prieſts, it was reſolved, *That immediately by deſcent His Majeſty was compleatly and abſolutely King, without the Ceremony of Coronation, which was but a Royal Ornament, and external Solemnization of the Deſcent.* This is plainly illuſtrated by ſeveral precedents taken out of our Hiſtories.

King *H.* 6. was not Crowned till the 9th year of his Reign; yet divers were attainted of Treaſon before that time, which could not have been, had he not been King. *Speed*, lib. 9. c. 16.

So Queen *Mary* Reigned Three Months before ſhe was Crowned; in which ſpace the Duke of *Northumberland*

berland and others were Condemned and Executed for Treason, which they had committed before she was proclaimed Queen.

So King *Edward* 1. was in *Palestina* when his Father died, and in his absence, the Nobility and Prelates of the Realm assembled at *London*, and did acknowledge him for their King. In his return homeward he did Homage to the *French* King, for the Lands which he held of him in *France*: He also represſed certain Rebels of *Gascoin*, amongst whom *Gasco* of *Bierne* Appealed to the Court of the *French* King, where our King *Edward* had Judgement, That *Gasco* had perpetrated Treason, and thereupon he was delivered to the pleasure of King *Edward*. *Walsingham* in *Edw.* 1. And all this happened before his Coronation, which was a Year and Nine Months after he began to Reign.

Besides, we know, that so soon as the King departeth out of this Life, His Successor is forthwith proclaimed; all Writs go forthwith in his name; all Courts of Justice exercised, and all Offices are held by his Royal Authority; all States, all Persons are obliged to bear him Allegiance: Which things plainly demonstrate, that the King hath his Kingdom by descent, and stays not to be made King by the People at his Coronation. Indeed the people are at that time asked their Consent; not that they have power to deny, but that the King having their Consent, may with greater Security and Confidence rely on his people.

Curtius, lib. 5. *Fides vestra & Constantia* (says King *Alexander*) *ut Regem me esse Credam, facit. Ferrum tuetur Principem, melius fides.* Seneca.

Thus you see, That *the King of* England's *Right to his Emperial Crown is by Birth, Descent, or Hereditary Succession.*

As

As to the Second Respect, it is evident *That the Power of the King of* England, *is by the Fundamental Laws of the Land as Great and Royal, as that which our Divines have proved out of the Scriptures to belong unto the Kings of* Juda *and* Israel. For,

1. He has vested in his Royal person the power of making Laws, the Authority Legislative being a peculiar and incommunicable privilege of the Supreme Power; so that the Office of the Two Houses of Parliament in this affair is only Consultive, or Preparative; but the Character of the Power rests in the final Sanction, which is in the King of *England*.

2. To him belongs the power of Life and Death; He hath the Sword of Justice to punish them that transgress his Laws, and endeavour to cause Sedition; 'Tis he that can remit the severities of the Penal Laws, by pardoning both the smaller Breaches of them, and more Capital Offences, which he might most justly punish. *Bracton*, Lib. 1. c. 9. N. 3. Lib. 3. c. 8. N. 4. & lib. 3. c. 14. N. 18. *Fleta*, lib. 1. c. 16. N. 3. Sir *Thomas Smith*, *de Rep. Angl.* lib. 2. c. 4. *Lambard inter Leges Edovardi*, F. 143. 9. E. 4. 2. a. 27. H. 8. c. 24.

3. He only may Proclaim War, and he solely can establish Peace among his people, *Co.* Lib. 7. *Calvin's Case*, F. 256. *Smith's Common wealth*, Lib. 2. c. 4. 19. E. 46. *Co.* 4. *Just.* f. 152. 2. H. 5. cap. 2.

4. There is no Lawful Assembly, Meeting, or Court, but by Authority from him: Yea, the High Court of Parliament was at first devised, framed, and instituted by him. *Polyd. Virg.* Lib. 11. *Speed*, *Stow*, *Martin*, *Baker*, and many others in the Life of *H.* 1.

The Royal Power set forth in Scripture; By it War proclaimed, 2 *Chr.* 13. 4 By it Peace concluded, 1 *Kings* 15. 19. By it the people assembled and dismissed, *Joshua* 24. 1. and 28. 1 *Kings* 8. 1, and 66. By it a Law is made; By a Law repealed. 1 *Sam.* 14. 24, 34. By it Offenders are pardoned, 2 *Sam.* 14. 21. By it all Officers are chosen, as well Ecclesiastical as Civil, 1 *Chr.* 26. 32. *Gen.* 41. 33, 34, 41. *Exod.* 18. 25, 26. 2 *Sam.* 23. 23. 1 *Kings* 4. 3, to 20. 2 *Chron.* 17. 7, 8. *Nehemiah* 5. 14, 15. *Hester* 3. 12 *Dan.* 2. 43, & 9. 15, 17, 18, 19, and *Chap.* 26, 9, to 16. *Nehem.* 7. 1, 2, 3.

49. By it all Arms and Fortifications are disposed, 2 *Sam.* 8. 14. 1 *King.*

5. By

5. By him all the Officers of the Realm, whether Temporal, or Eccleſiaſtical, are choſen and eſtabliſhed; the Chief and Higheſt by himſelf immediately; and mediately the Inferiour Officers by Authority from him. Sir *Thomas Smith*, Lib. 2. Cap. 4, & 5. *Bracton*, Lib. 2. c. 24. *Mirror* c. 4. Sect. 2, & 4. *Fleta* Lib. 1. c. 17. 12. *H.* 7. 17. *b. Co.* Lib. 12. *Caſe of Conſpiracy*, f. 25. 27. *H.* 8. c. 24.

6. By him all Liberties, Franchiſes and Cuſtoms are granted and confirmed to the people. *Bracton*, Lib. 2. c. 24. N. 2. *Cowells Juſt.* 1, 2, 5. *Dyer* 44. *b. Co.* Lib. 11. 87. *Caſe of Monopolies.*

7. He hath the ſole Power of ordering and diſpoſing all the Caſtles, Forts and ſtrong Holds, and all the Ports and Havens, and generally all the Militia of the Kingdom. *Co. Litt.* 5. a. *Co.* 2. *Juſt.* 30. 13. *Car.* 2. c. 6. 14. *Car.* 2. c. 3. *Co.* 3. *Juſt.* 160, & 83. *Co.* Lib. 12. *The Caſe of the Kings Prerogative in* Salt-Peter.

In ſhort, The Prince is the Life, the Head, and Authority of all Things that be done in the Realm of *England*. *Smith*, Lib. 2. c. 4.

Cambden in his *Britania* of the King of *England*.

Supremam poteſtatem, & merum Imperium apud nos habet: Nec in Imperii Clientela eſt, nec Inveſtituram ab alio accipit, nec preter Deum ſupremum agnoſcit: He hath Soveraign Power, and Abſolute Command among us; neither holdeth he his Empire in Vaſſallage, nor receiveth the Inveſtiture, or Enſtalling from another; nor yet acknowledgeth any Superiour but God Almighty above.

Lib. 1. c. 8. N. 5.

Bracton, That Wrote in the Reign of *H.* 3. ſays thus, *Sunt etiam ſub Rege Liberi Homines & ſervi ejus poteſtati ſubjecti, & omnis quidem ſub eo, & ipſe ſub nullo, niſi tantum ſub Deo*: And in another place after ſays he, *Rex*

Rex habet Jurisdictionem supra omnes, qui in Regno suo sunt. Lib. 4. c. 24. N. 1.

King *H.* 8. upon a Contest touching an Ecclesiastical Immunity, uttered these very words; *By the permission and Ordinance of God we are King of* England, *and the Kings of* England *in times past had never any superiour, but God only; Therefore know you well, that we will maintain the Right of our Crown, and of our Temporal Jurisdiction, as well in this as in all other Points, in as ample manner as any of our Progenitors have done before our time.* Add hereunto, That this Soveraignty and Supremacy appertaining to our Kings, and to the Emperial Crown of *England*, is asserted, not only by our Books of Law, but likewise those Statutes that have been Enacted by our Princes and Nobles in Parliament, do affirm the same; witness 16 *R.* 2. *C.* 5. 24. *H.* 8. *c.* 12. 25. *H.* 8. *c.* 21, & 22 1 *Eliz c.* 1. & 1. *Jac. c.* 1. All which Statutes you may peruse at your own leisure. Now I would fain know of any *Popeling* or *Fanatick*, what greater or more Royal Power can any Prince of *Juda* or *Israel* claim, than is here by our Laws acknowledged to be in the King of *England*. *Dod. Burnet's Hist. of the Reformation, Lib. 1. part. 1. f. 17.*

The Third Respect in his Charge and Duty, which consists in the observance of the Law of God, the Law of Nature, and the Laws of this Realm.

To observe the Law of God, He is bound as a Christian; to observe the Law of Nature, he is obliged as a Man; to observe the Laws of his Realm, he is bound as a King: Nor is he only bound, *vinculo Officii*, as he is a King, tho' this is a strict tye, considering to whom he must one day render an Accompt of his Stewardship; but he is also bound, *Vinculo Juramenti*, by an Oath taken at his Coronation: The effect whereof is

Of the Oath at the Coronation. see Fleta Lib. 1. c. 17. N. 12. 13. 14. &c.

this, *To keep, confirm, and defend all Laws, Customs, and Freedoms, granted by his Predeceſſors to the Clergy or People; to preſerve Peace and Concord, and cauſe equal and right Juſtice to be done, according to his Power.* Whence it is very evident, that the King hath his Duty enjoyned him, and ought not to make his Will the Rule of his Actions. *Temperent igitur* (ſays *Fleta* Lib. 1. c. 17. N. 11.) *Reges potentiam ſuam per Legem, quæ frenum eſt Potentiæ, quod ſecundum Leges vivant, quia hoc ſanxit Lex humana, quod Leges ſuum ligent Latorem. & alibi digna vox ex Majeſtate Regnantis eſt Legibus alligatum ſe principem profiteri: præterea nihil tam proprium imperio quam Legibus vivere, & majus eſt Imperio Legibus ſubmittere Principatum.*

The fourth and laſt Reſpect, is in the rendring of his Account; For as the King's mentioned in Scripture were not, ſo the King of *England* is not accountable for his Actions to any but God alone.

(o) Prov. 8. 15. Rom. 13. 2. Pſalm 82. 8. John 19. 11. Pſal. 62. 11.

Firſt, Becauſe the King of *England* hath not his Crown from any but God alone. Not only *Holy* (o) *Scripture*, but the writings of Heathens have declared, that in Soveraign Princes there is, Θειον τι, ſomething divine, above the reach of man, which cannot be derived from them; and therefore they are deſcended more immediately from the gods, and more particularly depending on them. Kings are from *Jupiter*, (ſays *Callimachus*,) and nothing ever deſcended more ſacred from him. And *Homer*, Τιμη δ' εκ Διος εστι; *Ab Jove ſummus Honos. Omnis provectus, maxime Regius, ad divinitatis munera referendus eſt* Says Vitigis, *apud Caſſiodorum. Tibi ſummum Rerum Judicium, dii dedere, nobis obſequii gloria relicta eſt*; no Law could puniſh, nor any call Kings to account but the gods, who

Miterent apud Tacitum lib. 6.

as

as they gave them the higheſt Empire here, ſo did they leave their Subjects nothing but the Glory of obeying.

But it may be ſaid by our *Fanaticks*, how can the Kings Power be thought to be only and immediately from God, when it is derived to him by ordinary means of Hereditary Succeſſion?

It is anſwered, That Election, Succeſſion, and Lawful Conqueſt, are Titles whereby Princes receive their Authority; they are not the Original and immediate Fountain of this Authority. Heat, Moyſture, Cold, Dryneſs, and our Temper ariſing from them (whilſt we are miraculouſly faſhioned in our Mothers Womb) are preparations, whereby our Bodies are made fit Receptacles for our Souls; but the Creator of our Souls is God: So Princes have juſt claim to their Soveraign Power, by the titles of Succeſſion and Conqueſt; but the Prime Author of their Power is God. *Cujus juſſu* (ſays Irenæus) *naſcuntur homines, ejus juſſu Conſtituuntur Principes: By whoſe appointment they are born Men, and made reaſonable Creatures; by his appointment are they made Princes.* And as they receive their Power only from God, ſo for the good or evil Adminiſtration thereof, they are accountable only unto God, as unto their Superior, and not unto any mortal Creature. God only maketh them Kings, and only can unmake them, and deject them from their Thrones; according to the Rule of Law, *Ejuſdem eſt deſtituere, cujus & inſtituere.*

Secondly, The Oath that the King takes at his Coronation, binds him only before God; for there is no Condition, Promiſe or Limitation, whereby he is made Accountable to his People.

Thirdly, By the ſuffrage, and Teſtimony of our Lawyers, it appears, that the King of *England* is unaccountable to any humane Power on Earth. And we begin with *Bracton*, who tells us, that we have no Legal Remedy, we can only humbly Petition His Sacred Majeſty, *Locus erit Supplicationi, quod factum ſuum corrigat, & emendet; Quod quidem ſi non fecerit, ſatis ſufficit ei ad prænam, quod dominum expectet ultorem. Nemo quidem de factis ſuis, præſumat diſputare, multo fortius Contra factum ſuam venire.* If he will not hearken to our juſt and reaſonable deſires, *ſatis ſufficit*, his puniſhment is more than enough; for he muſt render an account to him that judgeth Righteouſly. Let not men preſume to queſtion his deeds, much leſs to undo by force what he ſhall do, though not according to Right. That our *Fanaticks* may not think this dropt from our *Bracton* unwariily, he repeats it in other places, and *Lib.* 5. *Tract.* 3. *De defaltis, Cap.* 3. *N.* 3. He puts the Caſe, that *the King ſhould do injury, and a Plea is brought againſt him, in whoſe behalf he did it; the King being Petitioned and Perſiſting*, and he rules it thus, *Quo caſu cum dominus Rex ſuper hoc fuerit interpellatus in eadem perſtiterit voluntate, quod vellet tenentem eſſe defenſum injuria, cum teneatur juſtitiam totis viribus defenſare, ex tunc erit injuria ipſius Domini Regis, nec poterit, ei neceſſitatem imponere, quod illam corrigat & emendet niſi velit, cum ſuperiorem non habeat niſi deum, & ſatis erit illi propœna, quod deum expectet ultorem.* If the King, who is bound to Adminiſter Juſtice to his utmoſt power, will not recall the wrong he did upon a falſe ſuggeſtion, in this caſe he injures his Subjects; but no body can force him to do Right, becauſe he hath ſupream Power; he hath no ſuperior but God only, and it is ſufficient that

Lib. 1. cap. 8. N. 5.

that we ſhall have a day of hearing hereafter at a juſt Tribunal, where he ſhall be puniſhed for doing wrong, and we amply requited for our patient ſuffering.

Gilbert de Thornton, Chief Juſtice under *Edward* the Firſt, ſpeaketh in the ſame manner; *Cum proviſum ſit, quod quilibet in ſui juris proſequutione potius judicio, quam viribus utatur, & oportet Læſos Regem adire, ut oſtenſis ſibi injuriis illatis, Celerem juſtitiam petentibus faciat exhiberi, qui ſi noluerit de ſeipſo, vel de alio, &c tunc deum expectent conquerentes ultorem: Nemo enim de facto Regis præſumat diſputaare, nec contra factum ſuum venire.* Fleta Lib. 1. c. 17. N. 9. *Stamford* in his Expoſition of the Kings Prerogative is of the ſame mind with *Bracton* and *Thornton*; for he ſays, *That by the Common Law, there lyeth no Action or Writ againſt the King, but when he ſeizeth the Subjects Lands or Goods, having no Title by order of Law ſo to do; Petition is all the Remedy the Subject hath, and this Petition is called a* Petition of Right.

With our Lawyers do concurr two of our Parliaments, which have declared that the King of *England* is, Ἀνυπεύθυνος, accountable to none but God, and therefore no way obnoxious to any humane coercive Power. *Thomas de Walſingham* mentions a Letter written to the Biſhop of *Rome* in the name of the whole Kingdom, from the Parliament held at *Lincoln, Anno Domini* 1301, wherein are theſe words, *Scimus, Pater Sanctiſſime, & notorium eſt, a prima inſtitutione Regni Angliæ, tam temporibus* Britannorum, *quam Anglorum, quod certum & directum dominium ad Regem pertinuit neq; Reges Angliæ ex libera pre-eminentia Regiæ dignitatis, & Conſuetudine cunctis temporibus obſervata, coram aliquo Judice Eccleſiaſtico, vel ſeculari reſpondérunt, aut reſpondere debebant.* We know moſt holy Father, and it is manifeſt,

feſt, from the very beginning of the Kingdom of *England*, as well in the time of the *Brittains* as of the *Angles*, that the certain and direct dominion hath belonged unto the King, neither have the Kings of *England* (by reaſon of the undoubted preheminence of the Royal Dignity and Cuſtom obſerved in all Ages) anſwered, or ought to anſwer before any Judge Eccleſiaſtical or Civil.

The other Parliament was held at *Weſtminſter* in the Reign of the King that now is, whereat the Lords and Commons have declared, *That by the undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People collectively or repreſentatively, nor any other perſons whatſoever ever had, have, hath, or ought to have, any coercive Power over the perſons of the Kings of* England.

12. Car. 2. c. 30.

You ſee, (Sir) that though there be Laws to guide and direct our Princes, yet if they chance to forget themſelves ſo much as to violate and break through them, there is no Law whereby Subjects may reſiſt and puniſh them; their Miniſters and Inſtruments are ever accountable, but as to themſelves, it is a known Maxime among our Lawyers, *That they can do no wrong.*

But after all that has been ſaid, there are ſome Hunt-Scrap Lawyers and Polititians ready to raiſe ſuch objections as theſe following.

Object. 1. From whom the King receiveth his power, to them he is accountable; but from the people the King receiveth his power; as *Forteſcue* delivers, *Cap.* 13. *Ad tutelam Legis ſubditorum ac eorum Corporum & Bonorum, Rex erectus, & hanc poteſtatem a populo eſtluxam ipſe habet.* A King is ordained for the defence of the Law of his Subjects,

Subjects, and of their Bodies and Goods; whereunto he receiveth Power of his People: Therefore to his People, the King is accountable.

Solution. If the Makers of this Objection did rightly set down the words of *Forteſcue*, they might eaſily Anſwer themſelves; for it is not barely *Rex* a King, but *Rex hujuſmodi*, ſuch a King, meaning a King whoſe Government is meerly Politick. But the Government of *England* is not meerly Politick, nor meerly Regal, but mixt; partly regal and partly politick: as *Forteſcue* ſaith preſently after, *Regnum Angliæ ex Bruti Comitiva Trojanorum, in dominium politicum, & Regale prorupit*; The King of *England* out of *Brutus* his retinue of the *Trojans*, firſt grew into a Politick and Regal Dominion. And in the Ninth Chapter, *Rex Angliæ principatu, nedum regali politico, ſuo populo Dominatur*: The King of *England* Governeth his People by Dominion, notonly Regal, but alſo Politick.

How it is Regal, and how Politick, doth plainly appear by what hath been before ſpoken; for in regard all Power and Authority is derived from him, and he holds his Kingdom, and there withal his Power from God only, it muſt needs be, that his Government is Regal; and in regard he is tyed to the obſervance of the Laws of his Kingdom, (whereby *Poteſtas Regia Lege politica cohibetur* Forteſcue, *Cap.* 9. The Power Regal is reſtrained by a Law Politick) it muſt needs follow, that this Government is Politick: So that in reference to his Power, he is a Regal King; in reference to his Duty, he is a Politick King.

The Objection therefore being grounded upon *Forteſcues* words, of a Kingdom meerly Politick, does not concern our Kingdom.

He

Object. 2. He who is under the Law, may be called to account for his Actions; but the King is under the Law, *Bracton* says, Lib. 1. c. 8. N. 5. *Ipse Rex non debet esse sub homine, sed sub Deo, & sub Lege, Quia Lex facit Regem.* The King himself ought not to be under man, but under God; and under the Law, because the Law makes the King.

Solution. In Answer to this Objection, we must call to mind that there is a two fold Power in the Law, a *Directing Power*, and a *Correcting-Power*.

In respect of the former, the King is under the Law, *That is to say*, the Law is the Line and Rule whereby the Will of the King is guided and directed; and in this sence *Bracton* spake.

In respect of the later, the King is not under the Law. For how can we possibly conceive, that he who giveth Life to the Law, should by the Law offer force unto himself, and compel himself; for as with the *Grammarians* the Imperative-Mood hath no first Person, so with the Civilians; *neq; imperare sibi, neq; se prohibere quisquam potest*, no man can Command or forbid himself; at leastwise no man can impose such a Law upon himself, but that he may recede from it when he pleaseth. *D.* 32. 1. 22. *de Leg.* 3. *D.* 4. 8. 51. *d.* 36. 1. 13. *d.* 24. 1. 7, 8.

He that is under the former power only, is accountable to God only for his Actions; as the King. But he that is under both Powers of the Law, is accountable both to God and the Law; as is every Subject.

Again, In respect of the *Directing* Power, the Law is the *Object and Rule of Justice*, and so the King is under the Law: In Respect of the *Correcting* Power, the Law is the *Instrument of Justice*, and so the King is not under the Law; but the Law is a means, serving the King, to govern his People.

To

To illuſtrate this by an example; a Servant who guides and directs his Maſter, as he is a Guide, is ſuperiour to his Maſter; but conſider him as an Inſtrument and Servant unto his Maſter, and though he be never ſo Wiſe and Upright, yet his Maſter is above him.

And as the Law is ſaid to be above the King, ſo in the ſame Sence His Council may alſo be ſaid to be above him; that is, in reſpect they guide, direct and adviſe the King in the Governing of his People. For ſo ſay our two antient Lawyers; *The King hath Superiors in the Governing of his People, the Law by which he is made, and his Council,* to wit, *The Earls and Barons.*

Bracton Lib. 2. c. 16. N. 3. Fleta Lib. 1. c. 17. N. 9.

But here a ſcruple may ariſe, what *Bracton* and *Fleta* mean, when they ſay, *The Law makes the King.* It is anſwered, there are two ſingular and excellent benefits, which by the Law redound unto the King. The one is, the Law does declare and publiſh unto the People the Kings Right unto the Crown, ſo that they quietly and willingly receive him as their King, and ſubmit unto him. The other Benefit is, the Law doth ſupport and ſtrengthen him in his Emperial Throne. In both which reſpects it may well be ſaid, *That the Law makes the King*, and ſo Sir *Edward Coke* ſpake right when he told King *James*, *That the Law ſet the Crown upon his Head.*

Sir, Theſe Objections being fully (as I think) anſwered, I ſhall leave you, and your *Fanatick* Neighbours, to compare what hath been now by me proved, with what hath been by ſome of our Divines lately delivered out of the Scriptures; and you will clearly find, *That the King of* England *is ſuch a King as the Scriptures make mention of.* And if it be ſo, how then can *Fanaticks* take up Arms againſt him? If he be wicked, what advantage will it be to them to be worſe?

If he break his Oath, will they alſo break theirs? Or can they ſay, that they ſwear Allegiance unto him on conditon of his good Behaviour? Does the Statute of 25. *Ed.* 3. *C.* 2. declare it to be Treaſon only, to Levy War againſt a good, a juſt King? Why then did not the Proteſtants take up Arms againſt that bloody Idolatrous Queen *Mary*? Why then is it Treaſon to compaſs the Death of an Uſurper of the Crown? *Dalt.* 227. Was not *Spencer* baniſhed for the aſſirming, *That if the King did not demean himſelf by Reaſon, in the Right of the Crown, His Subjects were bound by Oath to remove him*? Oh *Fanaticks!* take heed of this unhappy principle, which not long ſince ruined as Flouriſhing a Kingdom as any in the Chriſtian World. By the dire Effects of it, our Religion was aboliſhed, our Foundations over-turned, our Laws abrogated, the Government of Church and State diſſolved; inſtead of Religion, Atheiſm and Infidelity, *Fanatick* Rage, and wild *Enthuſiaſme*; In ſhort, inſtead of Liberty and Property, the voice of Sequeſtrations, Plunders and Decimations were heard in the Land.

Co. Lib. 7. Calvin's Caſe.

Flagellum

FLAGELLUM CONCILIABULORUM:

OR, A

ROD for the FOOLS-BACK.

SHEWING

What Laws, both Forreign and Domestick, have been framed for the Prevention and Suppression of Conventicles.

THe gathering of Assemblies is reckoned as an especial Priviledge of Soveraign Princes; who in all times have been jealous of them, and provided severe Laws against them; and good Reason for such Jealousy, for that it is impossible (be the pretences of Meeting never so specious and fair) to Govern People, and keep them quiet long, if they have liberty to flock together at their pleasures: And therefore there is a necessity, that all Assemblings of people, whether upon a Sacred or Civil account, should be absolutely in the Power of Princes.

To which purpose, both remarkable and agreable are those Laws and Edicts made by the Policy of the *Greeks* and *Romans*, whereunto we will add those Laws, Canons, and Constitutions that have been Enacted in our Parliaments and Convocations. And we shall begin with those that are Foreign.

Isocrates, under the person of King *Nicocles*, thus instructs his Subjects;

Ἑταιρείας μὴ ποιεῖτε, μήτε συνόδους, ἄνευ τῆς ἐμῆς γνώμης. Αἱ γὰρ τοιαῦται συστάσεις, ἐν μὲν ταῖς ἄλλαις πολιτείας πλεονεκτοῦσιν, ἐν δὲ τῇ μοναρχίαις κινδυνεύουσιν.

 In

In English thus, *Make no Societies nor Coventicles without my Licenſe: Aſſemblies of this kind, as in other Governments they are hurtful, ſo in Monarchies they are exceeding dangerous.* Agreable hereto is that of *Mecenas* in *Dio*, who pronounceth, Συνωμοσίας καὶ συλλόγους ἑταιρείας τε ἥκιστα μοναρχία συμφέρει. That is in Engliſh, *Combinations, and Aſſemblies, and Aſſociations, are things that do not very well conſiſt with a Monarchy.*

Upon this account *Arnoldus Clapmarius* ſhews, how pernitious and dangerous are Conventicles in a Government; and gives us *Tacitus*'s Note, *In Rebellione Galliarum: Igitur* (ſays Tacitus) *per conciliabula & Cœtus ſeditioſa diſſerebant.* From whence ſuch unlawful Aſſemblies are prevented and ſuppreſſed by the Decrees and Conſtitutions of the *Roman* Princes, and Senators, which are to be found in the Body of the Civil Law; which I now preſent to the Reader.

Lib. 3. cap. 13. de Arcanis Donationis.

D. 47. 11. 2. de cœtibus illicitis. *Sub prætextu Religionis, vel ſub ſpecies ſolvendi voti Cœtus illicitos nec a veteranis tempetare oportet.*

D. 47. 22. 1. de Collegii. *Mandatis principalibus præcipitur præſidibus provinciarum, ne patiantur eſſe Collegia ſodalitia neve milites, Collegia in caſtris habeant. Sed permittitur tenuioribus Stipem menſtruam Conferre dum tamen ſemel in menſe coeant ne ſub prætextu hujuſmodi illicitum Collegium coeat. Quod non tantum in urbe, ſed & in Italia, & in provinciis Locum habere Divus quoq; Severus reſcripſit Sed Religionis Cauſa coire non prohibentur, dum tamen per hoc non fiat Contra Senatuſconſultum quo illicita Collegia arcentur. Quiſquis illicitum Collegium Uſurpaverit, ea pœna quo Tenetur qui hominibus armatis Loca publica vel templa occupaſſe judicati ſunt.*

D. 47. 22. 2. de pœna.

D. 47. 22. 3. 1. *In ſumma autem niſi ex Senatuſconſulti auctoritate, vel Cæſaris; Collegium, vel quod cunque tale Corpus coierit, contra Senatuſconſultum et mandata, & conſtitutiones collegium celebrant.*

By

By these Texts of Law, we are informed, that unlawful Colledges, Corporations and Assemblies, gathered together to bad uses, as to Eating, Drinking, Wantonness, Conspiracy, are punished as publick Routs and Riots. Thus much for the Digests, I come now to what is said of Conventicles in those parts of the Civil Law, we call the *Codes*, the *Novels*, and the *Feuds*.

In the *Code* of the Emperour *Justinian*, you have this Text of Law; *Conventicula illicita etiam extra Ecclesiam in privatis ædibus celebrari prohibemus, proscriptionis domus periculo imminente, si dominus ejus in ea Clericos nova, ac tumultuosa Conventicula extra Ecclesiam celebrantes susceperit.* For more of this matter of Conventicles, the Reader may at leisure see. *Cod.* 1. 12. 5. *Cod.* 1. 5. 6. and 8. *Cod.* 1. 3. 15. de illicitis conventiculis.

In the Novels it is declared, That the sacred Mysteries or Ministeries be not done in private Houses, but be celebrated in publick places, least thereby things be done contrary to the Catholick, and Apostolick Faith: unless they call to the celebrating of the same, such Clerks of whose Faith and Conformity there is no doubt made, or those that are deputed thereunto by the good will of the Bishop. But places to pray in, every man may have in his own House; if any thing be done to the contrary, the House wherein these things are done shall be confiscated, and themselves shall be punished at the discretion of the Prince.

In the *Feuds* it is decreed thus; *Conventicula quoque in Civitatibus, Omnesque Conjurationes, & extra etiam occasione parentelæ, & inter Civitatem, & Civitatem, & inter personam & personam, sive inter Civitatem & personam, modis omnibus fieri prohibemus. Et in præteritum factas Cassamus, singulis conjuratorum pœna unius Li-* Feudorum, lib. 2. Tit. 53.

bræ

bræ aliis puniendis. Episcopos vero Locorum Ecclesiastica censura violatores hujus sanctionis, donec ad satisfactionem veniant, volumus coercere. Receptoribus etiam malefactorum, qui prædictam pacem violeverint, & prædam ementibus nostram indignationem subituris, & ejusdem pœnis feriendis. Præterea bona ejus publicentur & domus ejus destruatur. By this edict it appears, that *Domus ubi conventicula, aut Conspirationes fiunt confiscatur, & Receptans violatorem Legis pari cum eo pœna puietur. The House where Conventicles or Conspiracies are made, is to be confiscated; and he who receives any offender against this Law, must be lyable with him to the same Punishment.*

Thus much of the Foreign Edicts made against Conventicles and unlawful Assemblies, I pass on to give an account what Laws, Canons and Constitutions have been ordained both in the Church and State of *England*, for the preventing and suppressing of the Conventicles of Sectaries. And we begin with the Laws enacted in the Reign of Queen *Elizabeth*, in whose name our *Whiggs* pretend to cast out of the Kingdom those Devils the *Jesuits*, &c. but will not observe one tittle of her Laws and Constitions made for the better Government of the Church and State.

In the 35*th*. year of the Queens Reign are enacted two Laws:

The first is for the punishment of those persons that obstinately refuse to come to Church, and perswade others to impugne the Queens Authority in Ecclesiastical Causes, &c. For what end this Punishment and for what persons intended, the preamble of the same Statute demonstrates; It is, *For the preventing and avoiding of such inconveniences and perills as might happen and grow by the wicked and dangerous practices of Seditious Sectaries, and disloyal Persons.*

The

The Second Law is, to impose a penalty on a Con- 35 Eliz. c. 2.
victed Popish-Recusant, removing above five Miles from the House, &c. And for what end the penalty is imposed, and what persons are meant by this Law, the preamble thereof will inform us; *It is for the better discovering and avoiding of such Traytorous and most dangerous Conspiracies and Attempts as are daily devised and practised against the Queens Majesty, and the happy Estate of this Common Wealth, by sundry wicked and Seditious persons, who terming themselves Catholicks, and being (indeed) Spies and Intelligencers not only for her Majesties Foreign Enemies, but also for Rebellious and Traytorous Subjects, Born within her Realms and Dominions, and hiding their most detestable and divilish purposes under a false pretext of Religion and Conscience, do secretly wander and shift from place to place within this Realm, to corrupt her Majesties Subjects, and to stir them to Sedition and Rebellion.*

From the Reign of Queen *Elizabeth*, we come to that of King *James*.

In 1. *Jacobi Regis, Anno* 1603. there is a Canon and Constitution whereby maintainers of Conventicles are censured; the words of the Canon are these:

Whosoever shall hereafter affirm or maintain, that there Canon. 11.
are within this Realm, other Meetings, Assemblies or Congregations of the Kings born Subjects then such as by the Laws of the Land are held and allowed, which may rightly Challenge to themselves the name of True and Lawful Churches: Let him be Excommunicated, and not restored but by the Arch-Bishop, after his Repentance and publick Revocation of such his wicked Errors. And as the maintainers of Conventicles are censured, so against the maintainers of Constitutions made in Conventicles, there is ordained a Canon,

Canon, which is the 12th. The words whereof are as follow:

Canon 12. *Whosoever shall hereafter affirm, that it is Lawful for any sort of Ministers and Lay-persons, or either of them to joyn together and make Rules, Orders or Constitutions in Causes Ecclesiastical, without the Kings Authority, and shall submit themselves to be Ruled and Governed by them: Let them be excommunicated* ipso facto, *and not be restored until they Repent and publickly revoke those their wicked and Anabaptistical errors.* Add hereto a Third Canon against Ministers holding private Conventicles; the very words whereof are these:

Canon 73. *Forasmuch as all Conventicles, and secret Meetings of Priests and Ministers, have been ever justly accounted very hurtful to the state of the Church wherein they live; we do now Ordain and Constitute, That no Priests or Ministers of the Word of God, nor any other persons shall meet together in any private House, or elsewhere, to consult upon any matter or course to be taken by them, or upon their motion, or direction by any other, which may any way tend to the impeachment or depravation of the Doctrine of the Church of* England, *or of the Book of Common-Prayer, or of any part of the Government and Discipline now established in the Church of* England *under pain of Excommunication* ipso facto. From King *James*'s Reign I descend to that of the Royal Martyr King *Charles* the First; by whose License and Authority there was a Constitution and Canon Ecclesiastical framed and agreed upon, (in the several Synods held at *London* and *York*, *Anno* 1640.) against Sectaries; And it is this; *Whereas there is a Provision now made by a Canon for the suppressing of Popery, and the growth thereof, by Subjecting all Popish Recusants*

Canon 5. *to the greatest Severity of Ecclesiastical censures in that behalf;*

half: This present Synod *well knowing that there are other Sects which endeavour the subversion both of the Doctrine, and Discipline of the Church of* England *no less than the Papists do, although by another way; for the preventing thereof, doth hereby decree and ordain, That all those Proceedings and Penalties, which are mentioned in the aforesaid Canon against Popish-Recusants as far as they shall be applyable, shall stand in full Force and Vigour against all Anabaptists, Brownists, Separatists, Familists, or other Sect or Sects, person or persons whatsoever, who do or shall either obstinately refuse, or ordinarily not having a Lawful Impediment, (that is for the space of a Month) neglect to repair to their Parish-Churches or Chapels where they inhabit, for the hearing of Divine-Service Established, and receiving of the Holy-Communion according to Law.*

And further, because there are sprung up among us a sort of factious people, Despisers and Depravers of the Books of Common-Prayer, who do not according to the Law resort to their Parish-Church or Chappel, to joyn in the publick Prayers, Service, and Worship of God with the Congregation, contenting themselves with the hearing of Sermons only, thinking thereby to avoid the Penalties due to such as wholly absent themselves from the Church. We therefore for the restraint of all such wilfull Contemners or Neglectors of the Service of God, do ordain that the Church or Chappel-Wardens, and Questmen, or Sidemen of every Parish, shall be careful to enquire out all such disaffected persons, and shall present the names of all such Delinquents at all Visitations of Bishops, and other Ordinaries; and that the same Proceedings and Penalties mentioned in the Canon aforesaid respectively, shall be used against them as against other Recusants, unless within one whole Month after they are first denounced, they shall make acknowledgment and reformation

of that their fault. Provided always that this Canon shall not derogate from any other Canon, Law, or Statute in that behalf provided against those Sectaries. From the Reign of King *Charles* the *1st.* I come to the Reign of the King that now is; wherein are Laws enacted (besides those against Nonconformists) for the preventing and suppressing of Conventicles. As for Example,

16. Car. 2. c. 4. In the *16th.* of King *Charles* the *2d.* there is a Law, Intituled, *An act to prevent and suppress Seditious Conventicles*; and in the preamble thereof are these words to be read;

Whereas an Act made in the five and thirtieth Year of the Reign of our late Sovereign Lady Queen Elizabeth, Entituled, *An Act to retain the Queens Majesties Subjects in their due Obedience, hath not been put in due Execution by reason of some doubt of late made, whether the said Act be still in force; altho' it be very clear and evident, and it is hereby declared, that the said Act is still in force, and ought to be put in due Execution. For providing therefore of further and more speedy Remedies against the growing and dangerous practises of Seditious Sectaries, and other disloyal persons, who under pretence of tender Consciences, do at their Meetings contrive Insurrections, as late Experience hath shewed.* As for the Punishment, *&c.* of this same Law, I shall not mention, because it is expired.

22. Car. 2. c. 4. In the *22d.* year of the Reign of the King that now is, there is another Law made, whereby 'tis enacted,

1. That if any of the Age of Sixteen years or upwards, being a Subject of this Realm, shall be present at any Conventicle, under pretence of any Exercise of Religion, in other manner than according to the Church of *England*, any Justice of Peace, *&c.* on Proof, Confession, Oath of two Witnesses, or notorious

ous Evidence of the Fact, may make a Record of ſuch offence, which Record ſhall be a Conviction, and ſet a Fine of Five Shillings for the firſt offence, and for the ſecond, Ten Shillings, to be Levied by diſtreſs and ſale of the offenders Goods; or in caſe of Poverty, on the Goods of others then convicted of the like offence at the ſame Conventicle.

2. That every perſon convicted of Preaching at any ſuch Meeting, ſhall forfeit for the firſt offence Twenty Pound; and if it be a Stranger, and his name and habitation not known, or he cannot be found, or be unable to pay, the Juſtice of Peace &c. may Levy it upon any perſons that were preſent; and for the ſecond offence Forty Pound to be levied, and diſpoſed, &c.

3. That every perſon convicted of wittingly ſuffering any ſuch meeting to be held in his Houſe, Yard, &c. ſhall forfeit Twenty Pound; and in caſe of his Poverty, upon perſons convicted of being preſent at the ſame.

4. That if any Conſtable, &c. knowing, or being informed of ſuch Meetings within his Precinct, ſhall not inform a Juſtice of Peace, or chief Magiſtrate, &c. but they or others called in their aid, ſhall wilfully omit their Duty, and being convicted thereof, they ſhall forfeit Five Pound. and the Juſtice of Peace and chief Magiſtrate, &c. omitting their Duty, ſhall forfeit one Hundred Pound. Now for what end are theſe Penalties impoſed? Why the preamble of the Law will tell you, That it is, *For providing Remedy againſt the growing and dangerous practices of Seditious Sectaries, and other diſloyal perſons, who under pretence of tender Conſciences, have, or may at their Meetings contrive Inſurrections, as late experience hath ſhewed.*

Now, Reader, if this very laſt Statute be put in due execution, I ſhould think our Sectaries would not have long, Pocket Courage enough to frequent Conventicles; and if they themſelves would but conſider, and weigh the preambles of the Laws and Canons before mentioned, they would pronounce themſelves *Guilty* of the greateſt folly and Impudence in the World, to be found at ſuch unlawful Meetings. Well, I have no more to ſay to our Sectaries not only to deſire them to read theſe following Lines, ſpoken by a moſt excellent (*a*) Prelate of our Church in a Sermon Preached before his Majeſty at *White-Hall*, 12. *Martii* 1664.

(*a*) *Doctor Laney* late Lord Biſhop of *Ely*, on 1. *Theſſ.* 4. 11.

A Man (ſaies he) *may go far in Religion, without troubling any; and if then they fall into ſome Error, or Misbelief in Religion, they ought not to be ſeverely handled; but when they betake themſelves to a Sect, that alters the caſe, it will then be Compaſſion miſtaken. A Locuſt alone is no ſuch perilous Beaſt to be fear'd or regarded by any; but when they come in ſhoals and ſwarms, and cover the Face of the Earth, they are a plague to the Country where they light. So to look upon a Sectary ſingle, who out of ſimplicity and good meaning, follows his Conſcience, our Hearts ſhould be every whit as tender for them as their Conſciences are; But if we look upon them in Company, they are as ill and dangerous as the Company they are found in; and the danger of all popular Meetings and Aſſociations to a State, makes it the proper buſineſs of a King and his Miniſters to look to it, and to provide againſt it: wherein the care hath been taken, deſerves a juſt Commendation.*

FINIS.

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